payments which the plaintiff would have made in those proceedings. The plaintiff should produce a bill, our registrar should then imagine himself a a taxing officer sitting in the sessions court and, having conditioned his mind so, tax the plaintiff's bill in accordance with the scale of costs applicable to the sessions court.

In view of the foregoing, I am of the view that the plaintiff's appeal against the decision of the learned registrar should be dismissed except in regard to the order last referred to in respect whereof I allow the appeal and direct the registrar to tax the plaintiff's bill of costs, appropriately amended or prepared afresh, on the scale of costs applicable to the sessions court unless in the meantime the plaintiff makes application for a certificate of a judge pursuant to the provisions of O 59 r 27(6).

As it was as much the responsibility of the defendants as the plaintiff's to transfer the action to the sessions court in the first place and to place before the registrar the authority by which he was required to tax the bill albeit on the scale of costs applicable to the sessions court, I make no order as to the costs of this appeal.

Order accordingly.

Solicitors: *John Ang & Jega; Ho, Chong & Menon.*

Reported by *Azra Moiz*

Bank of New Zealand v Wong Kee Tat

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R8-24-7-89
EUSOFF CHIN J
22 FEBRUARY 1990

Civil Procedure — Reciprocal enforcement of judgment — Jurisdiction of original court — Whether irregularity of original court affects registration — Reciprocal Enforcement of Judgments Act 1958, ss 4 & 5 — Supreme Court of Judicature Act 1969 [Sing], s 16

Revenue Law — Exchange control — Proceedings for debt — Payment subject to permission of Controller of Foreign Exchange — Exchange Control Act 1953, ss 4 & 36

The plaintiff successfully applied to the High Court of Malaya to register a Singapore judgment. The defendant applied to set aside the registration on the grounds, inter alia, that there was no service of the originating process, that the Singapore court had no jurisdiction over the defendant, and that the registration of the judgment would be contrary to public policy as the subject matter of the suit was a loan transaction calculated to defeat the provisions of the Exchange Control Act 1953. The registrar dismissed the defendants' application and he appealed to a judge-in-chambers.

Held, dismissing the defendant's appeal:

(1) The defendant's solicitors had been properly served with the notice of concurrent writ, and although the writ of summons had not been served, the defendant could not now object to the validity of the judgment and should have gone to the original court to rectify any error by setting aside the judgment.

(2) Service is not the sole foundation of jurisdiction of the High Court. The original court had jurisdiction to try the proceedings by virtue of s 16 of the Supreme Court of Judicature Act 1969, and the defendant not having entered an appearance, the judgment would be treated as final.

(3) The loan transaction was not illegal and void simply because the permission of the Controller of Foreign Exchange had not been sought. The Exchange Control Act 1953 does not provide a moratorium for debtors but merely controls the immediate destination of the payments.

[*Editorial Note*: The defendant has appealed to the Supreme Court vide Civil Appeal No 03-22-90.]

Cases referred to

1 *UMBC Bhd* v *Soo Lean Tooi & Ors* [1984] 1 MLJ 47 (refd)
2 *Malayan Banking Bhd* v *International Tin Council* [1989] 3 MLJ 286 (follD)
3 *Pemberton* v *Hughes* [1899] 1 Ch 781 (refd)
4 *Anthinarayana Mudaliar* v *Ajit Singh* [1953] MLJ 229 (refd)
5 *Bumiputra Malaysia Finance Ltd* v *Datuk Syed Kechik & Ors* (Kuala Lumpur Civil Suit C23-1989-86) (unreported) (follD)
6 *Contract and Trading Co (Southern) Ltd* v *Barbey & Ors* [1960] AC 244 (follD)

Legislation referred to

Exchange Control Act 1953 ss 4, 36
Reciprocal Enforcement of Judgments Act 1958 ss 4, 5
Supreme Court of Judicature Act 1969 [Sing] s 16

N Nadkarni for the plaintiff.
MS Murthi for the defendant.

Cur Adv Vult

Eusoff Chin J: It is not disputed that the plaintiff had commenced Suit No 164/88 in the High Court of Singapore (the 'original court') against Phelim Investment Pte Ltd, and Dato Wong Kee Tat (defendant here). On 18 October 1988, the plaintiff obtained judgment against them.

The first defendant in that suit is a resident of Singapore, but the second defendant, Dato Wong Kee Tat, is resident in Kuala Lumpur, Malaysia.

On 14 January 1989, the plaintiff applied for the original court's judgment dated 18 October 1988 to be registered as a judgment of the High Court Malaya under s 4 of the Reciprocal Enforcement of Judgments Act 1958 so that it may be enforced against Dato Wong (the defendant).

On 13 February 1989, the senior assistant registrar of the High Court made an order for the registration of the judgment of the original court. That judgment was a judgment in default of appearance, and it was for:

(1) the sums of $4,249,936.32 (equivalent to S$3,194,240 at the exchange rate of S$100 to $133.05 as at 18 October 1988 and $20,855.91 (equivalent to S$15,675.24);
(2) accrued interest of $264,976.14 (equivalent to S$199,155.31) as at 31 December 1987 together with further interest on S$3,194,240 at 2.5% per annum above the plaintiff's effective costs of funds from 1 January 1988 to date of judgment amounting to $311,264.17 (equivalent to S$233,945.26);
(3) costs of $1,100.32 (equivalent to S$827);
(4) further interest of 8% per annum is payable on the judgment debt from 18 October 1988 until date of payment.

On 24 May 1989, the defendant applied for an order to set aside the order for registration. On 16 December 1989, the senior assistant registrar dismissed this application to set aside. The defendant appealed to the judge-in-chambers. The grounds relied upon by the defendant are:

1 That there has been no due service of the originating process in that the defendant was never served with the writ of summons of the court of the original jurisdiction.
2 That there has not been voluntary submission to the jurisdiction of the court of original jurisdiction.
3 That the registration was done contrary to the Reciprocal Enforcement of Judgments Act 1958.
4 That the court of the original jurisdiction had no jurisdiction over the defendant.
5 That the enforcement of the judgment would be contrary to public policy in Malaysia in that the municipal laws of Singapore are being enforced through these proceedings.
6 That the notice of proceedings in Singapore was not received in time to give sufficient time to enable the defendant to defend the proceedings.
7 That the defendant did not appear at the proceedings in Singapore.
8 That prior to Suit No 164/88 the plaintiff had commenced an earlier suit and had obtained default judgment.
9 That the subject matter of the suit was a loan transaction calculated to defeat the operation of the provision of the Exchange Control Act 1953 of Malaysia.
10 That the procurement of the guarantee was not approved by the Controller of Foreign Exchange Malaysia.

The affidavit of the solicitor for the defendant stated that he was authorized by the defendant to accept the cause papers. On 6 May 1988, he had received the notice of the concurrent writ and the order for service out of jurisdiction of the original court, from a process server. The order for service out of jurisdiction gave the defendant 21 days after the service of the notice of the concurrent writ within which he had to enter an appearance.

On 16 August 1988, the defendant's solicitor received through the post a copy of the writ of summons from the plaintiff's Singapore solicitors, together with an amended statement of claim, amending by deleting and adding certain figures in the original statement of claim but otherwise the total amount claimed remained the same.

The defendant did not enter an appearance in the original court within the stipulated 21 days, and on 18 October 1988, the original court gave judgment in default of appearance against the defendant.

Learned counsel for the defendant relied on s 5(1)(a)(ii) and (v) of the Reciprocal Enforcement of Judgments Act 1958 which is:

> On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment —
>
> (a) shall be set aside if the registering court is satisfied —
>
> (ii) that the courts of the country of the original court ... had no jurisdiction in the circumstances of the case;
> (v) that the enforcement of the judgment would be contrary to public policy in Malaysia;

Learned counsel's argument is that although he had been properly served with the notice of the concurrent writ and order of service out of jurisdiction, the service on him of the writ of summons and the amended statement of claim had not been properly done since there was no further order of the original court for service of these further documents on him out of jurisdiction. Therefore the defendant was not bound to make an appearance in the original court. The judgment of the original court was founded on the amended statement of claim, and since the

amended statement of claim had not been properly served on him, the original court should not have given the judgment in default of appearance. He alleged that the original court had acted without jurisdiction when giving that judgment for the plaintiff.

The plaintiff's counsel argued, and I agree with him, that if there had been any irregularity or non-conformity of the rules of court, then the defendant ought to have gone to the original court to rectify the error, by applying to set aside the judgment in default of appearance.

I find that the defendant had been properly served with the notice of the concurrent writ on 6 May 1988. If he had wanted to enter appearance within 21 days of the date of that service, the last day would have been 27 May 1988. The defendant did not avail himself of this opportunity to enter an appearance and file his defence against the claim. His reason is that the original court had no jurisdiction over him. The question of jurisdiction had been dealt with in a similar case by Yusof Abdul Rashid J in *UMBC Bhd* v *Soo Lean Tooi & Ors.*[1] There, the learned judge held that s 16(1) of the Supreme Court of Judicature Act 1969 [Sing] conferred jurisdiction on the High Court of Singapore to try all civil proceedings where one of several defendants resided or had his place of business in Singapore. In Malaysia, s 23(1)(b) of the Courts of Judicature Act 1964 has similar provision as that of the Singapore law. In *Malayan Banking Bhd* v *International Tin Council*,[2] the Supreme Court decided that the High Court in Malaysia has jurisdiction to try civil proceedings where one of several defendants resides in this country, and the High Court may give leave to issue and serve out of jurisdiction, a notice of concurrent writ of summons on a co-defendant residing in London. Further, the Supreme Court held that service is not the sole foundation of jurisdiction of our High Courts.

Learned counsel for the defendant submitted that there was no judgment against the defendant because the subsequent service by post of the copy of the writ of summons and the amended statement of claim was not done by leave of the High Court of Singapore. The writ of summons itself was endorsed with the words: 'Not for service out of jurisdiction'.

Learned defence counsel further submitted that there was an irregularity or slip in the course of the proceedings in the original court leading to the obtaining of the judgment by the plaintiff. That omission to comply with the rules of procedure by the original court goes to the root of jurisdiction, and that therefore it must be treated as if there is no judgment of the original court against the defendant.

My finding is that the original court had jurisdiction to try the proceedings. In the exercise of its jurisdiction, the original court had granted leave for notice of the concurrent writ to be served on the defendant who chose not to defend himself. He did not even file an application to the original court to set aside the judgment in default.

In *Pemberton* v *Hughes*,[3] the plaintiff claimed her share of property from the estate of her deceased husband. The other beneficiary alleged that the plaintiff was not legally divorced by her former husband before she married the deceased because the writ of subpoena for the divorce proceedings issued by the Florida court did not comply with the rules of the Florida court. The rules there provided that the time for appearance must not be less than ten clear days from the date of the issue of the writ. The writ only gave nine clear days. Because of this irregularity, it was argued that the whole of the subsequent proceedings was rendered null and void, and therefore the decree for divorce was of no effect whatever. Consequently the plaintiff could not marry the deceased. The High Court came to the conclusion that this defect went to the root of the jurisdiction of the Florida court and was fatal to the validity of the divorce. On appeal, the Court of Appeal held:

> Here it is alleged there was no proper service. The true principle seems to me to be that a judgment, whether in personam or in rem, of a superior court having jurisdiction over the person, must be treated as valid till set aside either by the court itself or by some proceeding in the nature of a writ of error, unless there has been some defect in the initiation of proceedings, or in the course of proceedings, which would make it contrary to natural justice to treat the foreign judgment as valid, as, for instance, a case where there had been not only no service of process, but no knowledge of it. The allegation of no service alone would not in such a case avail the defendant.

As stated earlier, there is no doubt that the defendant was subject to the jurisdiction of the original court. He had been served with notice of concurrent writ to enter an appearance in the original court. He had been given an opportunity of having a hearing in the original court. He could have entered a conditional appearance and challenged the jurisdiction of the original court. But he had deliberately refused to exercise that opportunity.

In *Anthinarayana Mudaliar* v *Ajit Singh*,[4] it was decided that:

> A judgment or decree pronounced by the court of a foreign country will be treated and acted upon here as final, notwithstanding any irregularity of procedure under the local law, provided the foreign court had jurisdiction over the subject matter and the person brought before it, and the proceedings do not offend against natural justice.

As regards the allegation that the borrowing had been transacted without the permission of the Controller of Foreign Exchange ('Controller') and therefore in contravention of s 4 of the Exchange Control Act 1953 ('the Act') and consequently it was void for illegality, this issue had been dealt with by Shankar J in *Bumiputra Malaysia*

Finance Ltd v *Datuk Syed Kechik and Ors*[5] in Kuala Lumpur Civil Suit C23-1989-86. I agree with the views held by him that the borrowing does not make the act illegal by virtue of s 36 of the Act. Further, the non-obtainment of permission of the Controller before the borrowing puts the borrower or lender to risk of being prosecuted and sentenced under para 7 Part II of the First Schedule to the Act.

It was also held in *Contract and Trading Co (Southern) Ltd* v *Barbey & Ors*[6] that the Exchange Control Act 1974 does not provide a moratorium for debtors but controls the immediate destination of the payments they make. Moneys due under judgments can be paid into court; thus discharging the debtor, and the fund itself remains out of the control of the creditor until consent had been obtained.

I therefore dismiss this appeal, and confirm the order of the senior assistant registrar dated 16 December 1989, in which he refused to set aside the registration of the judgment of the High Court of Singapore.

Appeal dismissed.

Solicitors: *Skrine & Co; Murthi & Partners.*

Reported by *Mathavan Devadas*

Pendakwa Raya v Gan Ah Lik

HIGH COURT (SHAH ALAM) — ULANG BICARA JENAYAH BIL 51-182-87
WAN YAHYA J
20 JANUARY 1990

Statutory Interpretation — Repeal of Act — Whether repeal implies revocation of subsidiary legislation made thereunder — Interpretation and General Clauses Ordinance 1948, s 11(2) — Interpretation Act 1967, s 65(2)

The respondent was charged for carrying on the trade of selling and storing gas cylinders without having first obtained a licence from the President of the Municipal Council Klang, thereby having contravened byelaw 1(1) Part VII of the Town Board Byelaws (Cap 137). He subsequently appeared before the magistrate at Klang but before any evidence could be led by the prosecution against him, the learned magistrate, acting on an objection made by his defence counsel, acquitted and discharged the respondent. The substance of the defence counsel's objection was that the repeal of the Town Board Enactment of the Federated Malay States (FMS Cap 137) ('the Act') had by implication revoked the subsidiary legislation made thereunder, ie the Town Board Byelaws ('the Byelaws').

Held, allowing the Pendakwa Raya's appeal:

(1) The repeal of the Act could not be impliedly construed as having revoked the Byelaws because the repealing Act did not expressly revoke the Byelaws and neither were any Byelaws inconsistent with the Byelaws made under the Act. Therefore the validity of the Byelaws is saved by the validating and deeming provision in s 11(2) of the Interpretation and General Clauses Ordinance 1948.

(2) The true construction of any written law must be established on the relevant provision of the interpretation laws in force at the time when the written law was made. Until a further interpretation law is enacted by Parliament, any existing written law in this country must be construed in accordance with either of the two interpretation laws in force at the time when such written law was passed.

(3) The Byelaws which were enacted in 1935 must be construed in accordance with the provision of the 1948 ordinance and when so construed must inevitably lead to the conclusion that the Byelaws are valid and still subsisting.

Cases referred to

1 *Daihatsu (Malaysia) Sdn Bhd* v *Pendakwa Raya* [1987] 1 MLJ 88 (not folld)
2 *Watson* v *Winch* [1916] 1 KB 688 (not folld)
3 *Cheam Gaik Chye* v *PP* [1967] 1 MLJ 51 (folld)
4 *Surtees* v *Ellison* (1829) 9 B & C 750; 109 ER 278 (refd)

Legislation referred to

Interpretation Act 1967 s 65(2)
Interpretation and General Clauses Ordinance 1948 s 11(2)
Local Government Act 1976 s 73
Town Board Byelaws (Cap 137) byelaw 1(1)
Town Board Enactment of the Federated Malay States (FMS Cap 137) s 16(1)

Hanafiah bin Zakariah (Timbalan Pendakwa Raya) for the appellant.
Thomas Mariasoosay for the respondent.

Cur Adv Vult

Wan Yahya J: On 21 October 1985, the respondent was found to be carrying on the trade of selling and storing gas cylinders without having first obtained a licence from the President of the Municipal Council, Klang. He was, accordingly, charged for having contravened byelaw 1(1) Part VII of the Town Board Byelaws (Cap 137). He subsequently appeared before the magistrate at Klang but before any evidence could be led by the prosecution against him, the learned magistrate, acting on an objection made by his defence counsel, acquitted and discharged the respondent.

The substance of counsel's objection, as I understand it, is that the repeal of the present Act, in this instance, the Town Board Enactment of the Federated Malay States (FMS Cap 137) had by implication revoked the subsidiary legislation made thereunder, ie the Town Board Byelaws. The dominant force of his argument, however is based on the authority of a 1986 High Court decision in *Daihatsu (Malaysia) Sdn Bhd* v *Pendakwa Raya*[1] wherein it was held that the Byelaws were invalidated by the repeal of Cap 137.

The prosecution officer on his part arduously attempted to suggest to the learned magistrate the possibility of this case having been decided per incuriam. He drew the